

nominees were not voted on because of this new filibuster by the Democratic minority.

We need to have some perspective. Who is changing the rules? Until 2 years ago, all the judges got up-or-down votes. Judges that could not even get out of the Judiciary Committee with a majority vote were granted the privilege or courtesy of a vote in the Senate. During the debate when Clarence Thomas was being confirmed, several leading Democratic Senators came to the Senate to oppose Judge Thomas. They said they actually had thought about trying to filibuster his nomination but that would be wrong because filibustering judicial nominees is wrong. Senator LEAHY, Senator KENNEDY, and others came to this floor and said, we do not know whether we will defeat Clarence Thomas or not, but we are not going to defeat him with a filibuster because that would be wrong.

Sure enough, they were correct. They lost the vote, 48-52. He was confirmed. I admired them because they stood for principle. The rule and the tradition of this body had always been we give the nominees an up-or-down vote, but if they could get 51 votes for confirmation, they became a circuit court judge or a Supreme Court justice. That is what happened in the case of Clarence Thomas.

Now, all of a sudden, it has been turned around, and the Democratic minority, almost to a person, has said they believe judges should be filibustered, and the President's nominees are not going to get an up-or-down vote if they decide they want to filibuster a particular nominee.

As I said, at least a third of these circuit court nominees so far have been filibustered. It is our understanding that practice will continue unless we can get back to the way it has always been, the traditional role of the Senate in providing advice and consent with a majority vote, up or down.

It has also been suggested the President is nominating a new, wild variety of lawyers and judges to be circuit court judges, way out of the mainstream kind of people. This, of course, is absolutely ludicrous. The kind of people that President Bush has nominated are respected jurists or lawyers.

The American Bar Association, which used to be the Democrat's gold standard for approving the judicial nominees, has judged all of these candidates qualified. Yet somehow some of our colleagues on the left say they are out of the mainstream. My colleague on the Judiciary Committee, the Senator from New York, for example, has made this charge on several occasions.

I ask, who is probably more representative of the mainstream? A single Senator from a State, for example, like New York? Or the President of the United States who had to get elected with support from all over this country? I don't think anyone would say George Bush is out of the mainstream, that President Bush is out of the mainstream of this country.

Who are some of the people he has nominated? Some are judges who have had to stand for election, for example, in California and Texas, and have received supermajorities, 70 or 80 percent. I have forgotten the exact numbers of support from the citizens of their States. One is a blue State. One is a red State. When well over 50 or 60 percent of the citizens in this State vote to support these judges to continue in office on their State supreme court, you would hardly say these nominees are out of the mainstream. Yet those two particular judges, Janice Rogers Brown from California and Percilla Owen from Texas, are the ones for whom this filibuster has been applied.

It does not make sense to suggest a tradition of this Senate to give people an up-or-down vote is going to be overturned because all of a sudden a President is proposing people who are wildly out of the mainstream.

What has the Republican majority at least considered doing? Simply returning to the way it has always been, to going back to the 200 years—before 2 years ago—and giving people an up-or-down vote. Members can still vote against the nominee. Members do not have to vote for the nominee, but at least give them an up-or-down vote. We do that based upon the precedence that has been set by the then-majority leader of this Senate, the Senator from West Virginia, who, on not fewer than four separate occasions, utilized the precedence of this body to ensure that dilatory tactics could not prevail in this Senate and that we could move forward with the business of the Senate.

It is the very same precedent that would be used to reestablish the up-or-down vote which has been the tradition of this Senate all along. That is not rubberstamping. That is giving due consideration to these nominees and giving them an up-or-down vote at the end of the day.

When Americans look at this sort of intramural battle occurring in the Senate, they have to wonder why this is happening, why it is so important. I suspect it may have something to do with the fact there might be a vacancy on the Supreme Court, and our friends on the other side of the aisle are so afraid President Bush might nominate someone who could gain majority support they are prepared to actually refuse that nominee an up-or-down vote. That would be unprecedented in the history of this body. I don't think it is right.

Some people have called this the nuclear option because they threatened to blow the Senate up if we try to return to the traditional rule of an up-or-down vote in the Senate. That is a very unfortunate name and a very unfortunate threat. No one should be threatening to go nuclear or blow the place up or prevent the Senate from doing its business. Our constituents sent us here for a reason, to get work done, to pass

a budget, to pass the appropriations bill, to pass the bill that is before the Senate right now, the supplemental appropriations bill that will literally fund our troops' effort in Afghanistan and Iraq, to pass an energy bill, to pass a defense authorization bill, all of the other important things they want us to do here.

Yet we have some colleagues suggesting, if they do not get their way on these judges, like a school-yard bully who has a call go against him by the referee and picks up his ball and goes home so the rest of the kids cannot play. Is that the threat here; pick up your ball and go home so the rest of us cannot do the business we were sent here to do?

Let me make one final prediction. Last time we met as members of the Judiciary Committee, we could not get a quorum to do business. Not one member of the minority party showed up. We have to have at least one for a quorum. This was not the last meeting but the penultimate meeting. They said there were three members going to the funeral of the Pope; 3 out of 9. I predict, at another meeting on Thursday—and we need to pass the judges out to consider them on the floor—they will not give a quorum then, they will not show up or, if they do show up, they filibuster it so we cannot get the judges adopted. I predict right now the judges that are on the agenda for that meeting this coming week will not be passed out. They might pass out one or two, but they are not going to allow us to pass all of those judges so they can be considered by the full Senate.

It was Members of the minority party who complained, while Republicans never filibustered, they did keep some of President Clinton's judicial nominees bottled up in committee. We will see whether they are willing to pass these nominees—I think there are 6 or 7 pending—we will see whether or not they are willing to show up for the meeting so there is a quorum and enabling the committee to pass them out to the full body so we can debate the nominees or whether they talk and talk until the meeting has to end, no one else is around, and we no longer have a quorum or they simply do not show up for a quorum.

We will see what they do. I predict right now my colleagues are not going to allow us to get those judges to the Senate so we can begin the debate and the consideration of whether they should be confirmed. That will be a real shame and, again, a violation of what this Senate has always done in the past, even when we did not particularly think a nominee should receive an affirmative vote on the floor. I believe Clarence Thomas was in this situation. The committee passed him to the Senate to see what the full body would do to give its advice and consent which is what the Constitution calls upon us to do.

I close by urging my colleagues not to confuse this discussion with erroneous information or talk about things